



INTER-OFFICE MEMORANDUM LEGAL DEPARTMENT

TO: MAYOR STEPHEN J. LUECKE

FROM: CHARLES S. LEONE - CITY ATTORNEY *CL*

SUBJECT: LEGAL DEPARTMENT ANNUAL REPORT - 2008

DATE: FEBRUARY 4, 2009

I. OVERVIEW

In 2008 the City of South Bend Legal Department continued to provide support, advice and representation to various units of the City of South Bend and to represent the City in litigation in state and federal courts and before administrative agencies.

During 2008, the nine attorneys* of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, corporations, and authorities, including the Alcoholic Beverage Board, Human Rights Commission, Board of Zoning Appeals, Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Park Board, Century Center Board, Historic Preservation Commission, South Bend Building Corporation, Sister Cities of South Bend, Inc. and South Bend Common Council.

The Legal Department provides advice and direction to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against another person or entity and litigation is the only way to achieve the goal of advancing and protecting the City's interests.

The Department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established and to provide the framework for ongoing relationships.

During 2008, Attorney Shawn Peterson and Claims Investigator Dean Tinkel left the Legal Department staff. Attorney Lawrence Meteiver joined the staff to assist in primarily transactional work related to Community and Economic Development.

* The staff at the end of 2008 consisted of four full-time and five part-time attorneys (6.5 FTE), one paralegal, one office manager/paralegal, two legal secretaries and one collection specialist, a reduction of one position over the course of the year.

II. HIGHLIGHTS OF 2008

In 2008 the Department coordinated with outside counsel in the net recovery of \$4.6 M against several oil companies and oil refiners related to groundwater contamination by MTBE, a gasoline additive. The Department also managed the City's self-insurance liability claims processing and litigation defense, paying out under \$266,000 to claimants and litigants, the lowest amount in the past ten years.

The Department also saved the Department of Public Works about \$88,500 by handling temporary right-of-way acquisition for the Miami Road widening project without any additional staffing costs to the Department.

In 2008 the Department continued operation of a fifth year of the South Bend Local Government Academy to better communicate the role and operations of the City to local community leaders and to the public at large.

III. LIABILITY SELF-INSURANCE

The Department managed the City's self-insurance liability program, paying out \$265,438.69 in claims against the City in 2008. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies from year to year. The history of the City's liability self-insurance cost is as follows:

<u>Year</u>	<u># of New Claims Filed</u>	<u># of Claims Paid</u>	<u>Claims Paid</u>	<u>Year-End Claims & Suits Pending</u>
1998	249		\$ 411,221.79	
1999	343		\$ 446,104.48	
2000	245		\$1,102,372.60	
2001	352		\$ 648,242.73	
2002	220		\$ 341,655.19	63
2003	209	118	\$ 332,005.11	56
2004	220	125	\$ 330,949.26	60
2005	187	125	\$ 813,481.69	36
2006	169	90	\$ 401,769.01	45
2007	165	89	\$ 439,503.35	48
2008	206	74	\$ 265,438.69	43

Claims paid in 2008 were the lowest in the past ten years. Other than pothole claims, which increased from 12 in 2007 to 68 in 2008, new claims were filed against the City at historically low levels, demonstrating effective City-wide departmental leadership in reducing risks of operations. Claims backlog also continues at a low level.

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

In 2008, the statutory limit for claims against governmental entities and employees increased to \$700,000.00. Two new claims have been filed against the City at this higher level.

IV. PROSECUTION OF ORDINANCE VIOLATIONS

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2008, \$117,510.00 was collected through the Legal Department for ordinance violations and other miscellaneous accounts for various departments.

The history of total collections is as follows:

1999	\$ 75,446.00
2000	\$ 78,713.17
2001	\$114,053.78
2002	\$122,226.37
2003	\$160,036.66
2004	\$161,466.00
2005	\$193,846.25
2006	\$152,268.00
2007	\$103,745.00
2008	\$117,510.00

Under statutory provisions which became effective on July 1, 2006, the City Clerk's authority to collect fines increased from \$100.00 to \$250.00, thus significantly reducing the referrals of unpaid tickets to the Legal Department.

A breakdown of the history for the collection of ordinance violations, which include code enforcement, noise violations, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

	<u>Ordinance Violations</u>	<u>Parking Tickets</u>
2000	\$30,544.17	\$17,866.00
2001	\$70,737.27	\$15,703.00
2002	\$82,005.55	\$17,168.00
2003	\$96,008.56	\$13,736.65
2004	\$92,065.00	\$25,122.00
2005	\$91,060.23	\$21,839.00
2006	\$85,869.98	\$14,713.00
2007	\$58,878.00	\$12,973.00
2008	\$47,553.00	\$11,284.00

V. SPECIAL TAX ASSESSMENTS

In early 2007, the Legal Department and Code Enforcement worked with the St. Joseph County Auditor and Treasurer to establish procedures and forms to certify code enforcement civil penalties and demolition costs as special tax assessments, giving those City liens priority with other taxes on real estate ahead of mortgages and other lien interests. Collections under this new procedure, managed through Code Enforcement, have been as follows:

2007	\$ 99,000.00
2008	\$190,108.00

VI. LEGISLATIVE SERVICES

Legislative work of the department includes preparation of proposed ordinances to be submitted to the South Bend Common Council, review of proposed state legislation pending before the Indiana General Assembly, and monitoring of proposed federal legislation which could affect municipal operations.

VII. TRAINING ON LEGAL ISSUES

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to Uniformed Officers of the South Bend Police Department and the South Bend Human Rights Commission. Chief Assistant City Attorney Aladean DeRose also participated in IACT's training of new municipal lawyers in Indiana.

VIII. LOCAL GOVERNMENT ACADEMY

The Legal Department reorganized the South Bend Local Government Academy in 2008 to introduce residents to City operations and encourage them to participate in local government. City employees served as the faculty and the "classroom" traveled to the Street, Police and Fire Departments, O'Brien Center, the Morris Performing Arts Center and Palais Royale, and the Common Council Chambers.

Attendance at each Academy session has been approximately 19 students per session since beginning in the fall of 2004. The Academy showed people parts of the City they had never seen and how City government is working to serve them. A total of 208 individuals have attended Local Government Academy classes since its inception.

IX. LITIGATION

During 2008, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

<u>Litigation Area</u>	<u>City as Plaintiff</u>	<u>City as Defendant</u>
Animal Warrants	15	
Code Enforcement	14	11
Injunctions	39	
Foreclosures	2	193
Police Actions		17
Vehicles Accidents		6
Personal Injury (not vehicle)		6
EEOC Claims and Litigation		6
Worker's Compensation		2
Utility Matters	1	3
Miscellaneous		5
Total	71	249

The department filed significantly fewer Code Enforcement lawsuits in 2008 because of the initiation of the special assessment process to certify Code penalties and costs on property tax bills as shown below:

Code Penalty and Costs Lawsuits Filed

2006	178
2007	55
2008	3

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in seven mediation sessions in 2008 in an attempt to resolve disputes in litigation. Department attorneys also participated in the following administrative hearings in 2008:

<u>Agency</u>	<u>Number of Hearings</u>
Human Rights Commission	12
Code Enforcement	70
License Appeals	10
Unemployment Hearings	5
Board of Zoning Appeals	12
Joint Grievance Committee Hearings	3
Historic Preservation Appeal	1

In 2008, the Legal Department was active in pursuing the drug and disorderly house ordinance. A total of 220 Notices to Abate under the Drug House Ordinance and 40 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. Five of these notices resulted in the filing of injunction lawsuits.

Significant litigation concluded during 2008 included settlement of the Clay Utilities Lawsuit.

X. PUBLIC RECORDS

The Department coordinates responds to request for public records under the Indiana Access to Public Records Act. Under the Act, most initial responses are required within one business day. In 2008, the Department responded to 1,529 requests.

XI. TRANSACTIONAL ASSISTANCE

During 2008, Department attorneys prepared and reviewed approximately 814 agreements, resolutions and documents conveying real estate interests in transactions in which the City was involved, primarily for the Department of Community and Economic Development and Department of Public Works.

XII. NEGOTIATIONS

Negotiations during 2008 involving department attorneys included collective bargaining with FOP Lodge No. 36 and South Bend Firefighters Association Local No. 362, settlement negotiations and mediation to resolve pending claims and litigation, and project term negotiations to assist economic development activity.

XIII. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS

During 2008, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include service on the IACT Legislative Committee; St. Joseph County Bar Association Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar Committee of the St. Joseph County Bar Association; Indiana Municipal Lawyers Association Board; St. Joseph County Bar Foundation; and the Indiana Association of Cities and Towns.